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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176920
Party	Plaintiff Durance
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Submission	Motion to Suspend for Settlement Discussions
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Attachments	Motion to Suspend - 91176920.pdf (4 pages)(535890 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND TRIAL APPEAL BOARD**

Application Serial No.: 78/842,488
Mark: SKINDURANCE
International Class: 3
Applicant: Apex Energetics
Published: October 31, 2006

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DURANCE,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91/176,920
	:	
APEX ENERGETICS,	:	
	:	
Applicant.	:	
-----	X	

CONSENTED MOTION TO SUSPEND THE PROCEEDINGS

Opposer Durance, a Société à Responsabilité Limitée organized and existing under the laws of France, hereby moves for good cause again **to suspend these proceedings through March 29, 2010, a period of 90 days from the date of this consented motion**, pursuant to 37 C.F.R. §2.117(c), with the consent of Applicant. This date was selected to coincide with the similar request made in the related opposition proceeding, Opposition No. 91/172,506, involving the mark SUNDURANCE.¹

The parties have previously requested several suspensions of the discovery and testimony periods, all of which were granted. During this time, the parties have been diligently negotiating to resolve this matter. The current suspension is due to expire on December 29, 2009, and thus absent further suspension, proceedings will resume on December 30, 2009.

¹ The mark SUNDURANCE, Ser. No. 78/596,933, is owned by an entity related to Applicant/Defendant herein and is represented by the same counsel, Mr. Scott Tips. Opposer/Plaintiff in both proceedings is the same entity.

In its order dated July 6, 2009, the Board stated that if the parties requested another extension or suspension, they must include a progress report detailing their settlement negotiations. Since the last requested suspension, the parties have continued to exchange drafts of a settlement agreement for SKINDURANCE. However, the remaining issues relate to: (1) the channels of distribution, and (2) some of the goods on which the mark SKINDURANCE will be used.

Given the very high prospects for settlement and the fact that such settlement will result in the voluntary dismissal of this Opposition Proceeding, as well as the related proceeding, the parties believe it would be a waste of both time and money to proceed with discovery at this time. However, absent further suspension, the parties will need to commence discovery immediately, upon the end of the suspension.

Regarding a firm timetable for resolution, the parties anticipate that all outstanding issues will be resolved in less than 90 days, but request additional time so that: (1) the agreed upon terms can be incorporated into the written settlement agreement; (2) the agreement can be translated into French, if necessary; (3) the agreement can be executed by all three parties, two of which reside in the United States and one of which resides in France; and (4) no further suspension or extension need be requested. Thus, despite several prior suspensions, this request is made for good cause to allow the parties to finalize their amicable resolution of this matter, and not for an improper purpose, such as delay.

A request for a 90 day suspension is also being filed today in the SUNDURANCE case. The SUNDURANCE case also is currently suspended through December 29, 2009, with proceedings to resume December 30, 2009.

Opposer respectfully requests that the same schedule be adopted in this case, for the convenience of the parties. In the very unlikely event that this matter is not amicably resolved, it would be helpful if the two opposition proceedings remained on the same discovery and testimony schedule.

For the reasons set forth above, Opposer respectfully submits that good cause for this request has been demonstrated, and that the discovery and testimony periods be suspended through March 29, 2010, as requested.

Dated: December 17, 2009

Respectfully submitted,

LACKENBACH SIEGEL LLP

By:



Cathy E. Shore-Sirotn

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the enclosed Opposer's Consented Motion to Suspend the Proceedings was served on Applicant, this day, by U.S. Mail and electronic mail, addressed to Counsel for Applicant, as follows:

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Dated: Scarsdale, New York
December 17, 2009



Nicole Saraco